

**Submission to the United States Senate Committee on Finance
requesting reform of US tax law and FATCA to treat accidental American citizens fairly and reasonably
12 April 2015**

In Europe your Ambassador to Germany is already concerned about the spread of anti-Americanism in Germany (The Economist February 7th to 13th 2015). Could the morally unjust effect on accidental Americans of widely drawn citizenship laws coupled with a unique citizenship-based tax regime increase resentment among those people more likely to be the friends of the US? Their current predicament is as unfair as it is absurd. It is 150 years since Alice in Wonderland was published, but the US seems to operate its tax system as a perversely unjust Wonderland.

In his budget proposal for 2016 President Obama acknowledges the unfairness of the current law and has drafted a remedy for accidental Americans. This is a beacon of hope that common sense and natural justice will prevail. However, the budget proposal is not law. It is (I understand) not even a draft law and this narrow topic is not a crucial vote winner. It may seem odd to you to pass this proposal and so help potential voters to become non-voters. If you do make this proposal law, however, you will have the satisfaction of righting a wrong and making law which accords with what the US claims to stand for in the world.

How to become an accidental citizen: birth and a change in US law

In Germany and the rest of Europe alone there are estimated to be thousands of people who, as a result of FATCA, are discovering to their astonishment that they are accidental American citizens. I am one of them and this is my US tax Wonderland story:

Born in the US in 1968 to green card holding British parents, I left aged 3 months on my mother's British passport and grew up in the UK. At the time I was not a US citizen as the law required habitual residency for three years by majority and the US did not recognise dual citizenship until 1978. In 1986 I visited the US for the first time travelling on a US visa in my British passport. No US authority ever acknowledged me as a US citizen although I visited about 18 times over three decades. It appears that at some point in 1986 the law changed and the US imposed citizenship on me as an adult without asking me, without informing me and it seems without itself realising I was a citizen despite my place of birth in a well-known US city on the East Coast being clearly stated in my passport. Now the US authorities are rigidly insisting that I am a citizen with dire consequences.

In 2014-2015 my German bank identified me as a potential US citizen through FATCA: Wonderland starts. The US State Department has so far refused to confirm loss of citizenship. It has also failed to explain its own and the border force's failure to enforce US citizenship law on me for over three decades. If I had been told to renounce at 18 or at any point in my 20s or 30s, I would have been able to act. The consequences for my real life are serious: I face no longer being able to hold a bank account, be a member of my pension scheme, keep my savings accounts and if I were to die my British husband and children will lose out to the US's estate tax grab. Shouldn't discovering that you are a US citizen be a happy accident of life, not the complete destruction of its basis?

A fair and reasonable cost for 100 days in the US as a new born?

Renunciation is a route out of this unenviable predicament. The cost of formal renunciation has gone from being free until 2010 up to USD 2350. I am told I need to file US tax declarations for 5 years before and after renunciation: the cost of tax advice to make all required filings is estimated at USD 2000 per tax year. Although the special treatment for dual birth citizens could apply to me, because I have in turn emigrated to a third country it looks as if I will not qualify for the exemption so will have to pay an exit tax on my worldwide assets. I could be blacklisted too. All this in order to comply with the tax laws of a foreign country in which I have never lived and to which have no connection. The failures of both the US State Department and the Border Guards have compounded the problems I face. Is it fair to levy these fees and taxes when for three decades the US failed to treat me as a US citizen? It looks as if the US authorities are seeking to profit from their own mistakes and lax enforcement of citizenship law.

By changing the law on citizenship in 1986 and by applying a citizenship-based taxation system the US expanded its tax base by millions, accidentally I expect, but is unlikely to increase tax collected as these citizens will most likely be tax compliant in their country of residence and in Europe at least that means they already pay higher income taxes.

The burden of compliance

I am not sure what I resent more: (1) having to pay a tax adviser to help me fill in the overly complicated forms (take a look at the UK for an example of Plain English taxpayer-friendly documentation); (2) spending time preparing tax and renunciation forms, attending renunciation meetings (only available in working hours) and dealing with a foreign state and its bureaucracy (which seems byzantine to an outsider) which treats me as a tax cheat rather than a person in an unfortunate predicament; (3) knowing that I will owe no tax making the entire IRS process utterly futile on both sides; (4) being forced to pay an exit tax to a state in which I have never lived and being blacklisted for doing so; (5) proving negatives: not even being able to start on any tax process before obtaining a social security number for which I have none of the requisite documentation and then having to prove that I have never lived, studied or worked in the US by supplying documentary evidence of where I have lived, studied and worked for the whole of my life.

Does the IRS have the resources to manage the workload?

How will the IRS cope with the increased workload posed by these additional taxpayers? If now the IRS cannot find the real villains, US residents with secret bank accounts, because resources are short, then tying up precious resources to check the affairs of law-abiding citizens resident overseas is wasteful and futile for all involved. The only people to gain are expat US tax advisers. FATCA will swell the number of expat citizens which the IRS needs to deal with.

Whom, what and how the US should tax

The US is a country of immigrants and from its history should understand how abhorrent it is to be taxed by an imperialistic foreign power. This is the effect of your current taxation and citizenship system and you are not in good company: Eritrea and possibly China apply the same approach. If Europeans (to take a small example Germany, Greece, Ireland, Italy and the UK - although Asian and African countries could do the same) were to change their citizenship laws, make millions of Americans automatically citizens from birth on the basis of their bloodline and require them to pay tax, fines for late payment and, if they wish to cease to be citizens, charge an exit tax and renunciation fee, there would be outrage in the US at the injustice of the claim. Ireland, Italy and Greece could certainly do with expanding their tax base now.

This method of taxation is not on any European's agenda. Tax is indeed the price we pay for civilisation, but not by foisting taxpayer status on the citizens of other countries. It is those people resident in the US who need to pay for its services, not the babies who happen to be born there.

I have felt warmly to the US because of my accident of birth and would have loved to share that appreciation with my children. However, the behaviour of the US State Department and the oppressive nature of these laws have profoundly upset me. It appears that I may be an accidental American because of a series of changes in law in my lifetime. Accidental Americans have difficulty getting heard because we are not an homogenous group. We are not real Americans whom a senator or representative will be motivated to represent: we are asking for help not to be voters. We are not part of real US society. Our own governments can do little to change US law. I, therefore, appeal directly to you to:

- 1) reform the law to protect accidental Americans from US tax laws and FATCA;
- 2) grant immediately an express amnesty and exit for all accidental Americans on a no fee, no tax basis;
and
- 3) ensure the State Department and the IRS adopt a conciliatory manner in the way they deal with accidental Americans.

Yours sincerely



Clare Gibbons